

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MART LIIKANE, Plaintiff,) No. C05-1829RSL
v.) ORDER DECLINING TO RECUSE
CITY OF SEATTLE, *et al.*, Defendants.) VOLUNTARILY AND REFERRING
MOTION TO THE HONORABLE
MARSHA J. PECHMAN FOR REVIEW

I. INTRODUCTION

This matter comes before the Court on plaintiff’s “Affidavit of Prejudice” (Dkt. #43). In his affidavit, plaintiff argues that the undersigned has been prejudicial in this case and moves for the undersigned to recuse himself. The Court has reviewed the record and plaintiff’s affidavit of prejudice. For the reasons set forth below, the undersigned declines to recuse voluntarily.

II. DISCUSSION

A. Background

On March 23, 2006, plaintiff filed a motion for default against the City of Seattle, the City Attorney of Seattle, Darby DuComb, the Police Department of Seattle, Officer Eric Michl, the Department of Planning and Development, the Department of Licensing, and Hank Landis. See Dkt. #22. On April 19, 2006, the Court denied plaintiff's motion for default because the Department of Planning and Development had not been served in a manner authorized by Fed. R. Civ. P. 4 and as required by Local Rule 55(a), and plaintiff failed to give the defendants City

1 of Seattle, the City Attorney of Seattle, Darby DuComb, the Police Department of Seattle,
 2 Officer Eric Michl, the Department of Licensing, and Hank Landis written notice of his motion
 3 for entry of default prior to filing it as required by Local Rule 55(a).

4 On September 15, 2006, plaintiff filed an affidavit of prejudice alleging that the
 5 undersigned should be disqualified “because he, so far, has been prejudicial, partial, bias [sic]
 6 and unfair in conducting this case.” See Dkt. 43 at 1. Although plaintiff does not set forth in his
 7 affidavit of prejudice any actions of the undersigned that have been “prejudicial, partial, bias[ed]
 8 and unfair,” in “Plaintiff’s Opposition to City of Seattle’s Motion to Compel,” filed the same
 9 day as the affidavit of prejudice, plaintiff stated:

10 The tribunal who, pursuant to his oath of office, failed to be impartial and did not uphold
 11 the U.S. Constitution, conspired [sic] with the defendants and their shyster by
 committing [sic] perjury in his “Order Denying Motion for Default.”

12 Dkt. #44 (Plaintiff’s Opposition to City of Seattle’s Motion to Compel) at 4, ¶13.

13 **B. Analysis**

14 Local General Rule 8(c) states:

15 Whenever a motion to recuse due to alleged bias or prejudice directed at a judge of this
 16 court is filed pursuant to 28 U.S.C. § 144, the clerk shall refer it to the chief judge. If the
 17 motion is directed at the chief judge, the clerk shall refer it to the next senior active judge.
 Before a ruling is made on the motion to recuse any judge, the challenged judge will be
 afforded an opportunity to review the motion papers and decide whether to recuse
 voluntarily.

18 Section 455 of title 28 of the United States Code governs the disqualification of a district
 19 judge. It states in relevant part: “Any justice, judge, or magistrate judge of the United States
 20 shall disqualify himself in any proceeding in which his impartiality might reasonably be
 21 questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:
 22

23 Whenever a party to any proceeding in a district court makes and files a timely and
 24 sufficient affidavit that the judge before whom the matter is pending has a personal bias
 or prejudice either against him or in favor of any adverse party, such judge shall proceed
 no further therein, but another judge shall be assigned to hear such proceeding. The
 affidavit shall state the facts and the reasons for the belief that bias or prejudice exists[.]
 A judge must recuse himself if a reasonable person would believe that he is unable to be

1 impartial. Yagman v. Republic Ins., 987 F.2d 622, 626 (9th Cir. 1993). This is an objective
 2 inquiry regarding whether there is an appearance of bias, not whether there is bias in fact.
 3 Preston v. United States, 923 F.2d 731, 734 (9th Cir. 1991); United States v. Conforte, 624 F.2d
 4 869, 881 (9th Cir. 1980); see also Liteky v. United States, 510 U.S. 540, 555 (1994) (explaining
 5 the narrow bases for recusal). A litigant cannot, however, use the recusal process to remove a
 6 judge based on adverse rulings in the pending case: the alleged bias must result from an
 7 extrajudicial source. United States v. Studley, 783 F.2d 934, 939 (9th Cir. 1986).¹

8 Plaintiff argues the undersigned has been “prejudicial” in “conducting this case.” See
 9 Dkt. #43. Plaintiff does not, however, identify any extrajudicial source of the alleged prejudice:
 10 the only suggestion of bias is the undersigned’s conduct in this case and the earlier decision
 11 denying plaintiff’s motion for default. See id.; Dkt. 44 at 4, ¶13. In such circumstances, the risk
 12 that the litigant is using the recusal motion for strategic purposes is considerable. See Ex Parte
 13 Am. Steel Barrel Co. and Seaman, 230 U.S. 35, 44 (1913). Because a judge’s conduct in the
 14 context of judicial proceedings does not constitute the requisite bias under § 144 or § 455 if it is
 15 prompted solely by information that the judge received in the context of the performance of his
 16 duties as the presiding judicial officer, plaintiff has not met his burden of showing an appearance
 17 of bias.

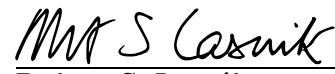
20 III. CONCLUSION

21 For all of the foregoing reasons, it is ORDERED that the undersigned DECLINES to
 22 recuse voluntarily. Plaintiff’s affidavit of prejudice (Dkt. #43) is hereby referred to the
 23 Honorable Marsha J. Pechman for review under Local General Rule 8(c). Consideration of the
 24 pending Motion to Compel (Dkt. #40), noted for consideration on September 22, 2006, is

25 ¹ Objections to a judge’s decisions are properly raised through an appeal, not a motion to recuse.

1 STAYED until Judge Pechman has had an opportunity to review plaintiff's affidavit and this
2 order.

3
4 DATED this 21st day of September, 2006.
5
6


7 Robert S. Lasnik
8 United States District Judge